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Office of The Ombudsman, Hong Kong

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Direct Investigation Report

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Leisure and Cultural Services Department’s Arrangements for Depositing Layout Plans of Public Pleasure Grounds in Land Registry

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Announcement Date: 12 December 2019

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This report is also available on our website at www.ombudsman.hk.
English version of the report will be uploaded soon.

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[illegible]

[illegible]

[illegible] 1,800 [illegible] 2019 [illegible] 3 [illegible] 450 [illegible][1] [illegible]

2. [illegible]

[illegible]

3. [illegible]

[illegible]

[illegible]

4. [illegible] 1960 [illegible] 1996 [illegible]

[illegible]

5. [illegible]

[1] [illegible] 583 [illegible] 33% [illegible]

[illegible]

6. [illegible]

[illegible]

[illegible]

7. [illegible]

8. [illegible]

9. [illegible]

[illegible]

10. [illegible]

(1) [illegible]

(2) [illegible]

(3) [illegible]

(4) [illegible]

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(6) [illegible]

(7) [illegible]

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2019 [illegible] 12 [illegible]

Executive Summary
Direct Investigation Report

Leisure and Cultural Services Department's Arrangements for Depositing Layout Plans of Public Pleasure Grounds in Land Registry

Introduction

The Leisure and Cultural Services Department ("LCSD") is managing nearly 1,800 public pleasure grounds ("PPGs") including parks, children's playgrounds, and beaches. In March 2019, there were media reports about LCSD's failure to deposit the layout plans of some 450[1] PPGs in the Land Registry ("LR") in accordance with the Public Health and Municipal Services Ordinance ("PHMSO"). As a result, the legal basis of enforcement actions by its staff and the Tobacco and Alcohol Control Office under the Department of Health in the PPGs concerned was questioned.

2. LCSD completed the procedures for depositing layout plans of all PPGs in about 10 months after the problem had come to its attention. Nevertheless, The Ombudsman initiated a direct investigation into LCSD's arrangements for depositing layout plans of PPGs in LR to avoid recurrence of similar cases.

Our Findings

3. Our investigation has identified four inadequacies in LCSD's depositing of layout plans of PPGs.

Before the Discovery of Failure to Deposit Layout Plans of Some PPGs

[1] LCSD subsequently confirmed that the number of PPGs involved was 583, which accounted for 33% of the total number of PPGs.

(1) Failing to Draw up Clear Guidelines for Meeting Statutory Requirements

4. The English version of PHMSO was compiled in 1960, and there is no clear indication that layout plans of PPGs shall be deposited in LR. Nevertheless, it is stipulated in the Chinese version of PHMSO, which was compiled in 1996, that a layout plan showing the boundaries of a PPG shall be deposited in LR. According to LCSD, it had all along acted upon the English version of PHMSO. However, our investigation revealed that the deposit procedures had been completed for more than half of the PPGs in accordance with the requirements in the Chinese version. That means throughout the years, LCSD had neither noticed nor paid attention to the inconsistent practice regarding deposits of layout plans of PPGs. Moreover, it had not drawn up any clear instructions or guidelines on meeting the relevant requirements under PHMSO. As a result, each District Leisure Services Office ("DLSO") under LCSD has its own way of dealing with the work.

(2) Failing to Actively Monitor Progress of Deposit Procedures and Keep Records

5. In the past, LCSD had not set up any centralised database to record, organise and manage information about depositing layout plans of PPGs. Neither had the LCSD headquarters kept any records. When the deposit procedures were completed, the layout plan would only be kept by the DLSO concerned, which was not required to report its work progress to the headquarters. Obviously, LCSD had never actively monitored the deposit procedures (including amending of layout plans).

(3) Ineffective Communication and Lack of Collaboration with Lands Department

6. The work of depositing layout plans has been handled by LCSD and the Lands Department ("LandsD") at the level of DLSOs and District Survey Offices respectively, and there has been no

established mechanism for communication between the district offices and headquarters of the two departments, or regular reviews regarding the progress or workflows. That has resulted in ineffective monitoring of the progress, and failure to detect promptly cases of delay or omission.

After Reviewing the Situation and Establishing Deposit Procedures

(4) Failing to Fill "Enforcement Vacuum" after Opening PPGs for Use

7. LCSD would announce in the gazette new PPGs and then open them for public use, and inform LandsD to prepare and deposit their layout plans. As the procedures for preparing and depositing layout plans usually took six months to one year, in the past, the layout plans of most PPGs were not yet deposited when the venues were open to public. In other words, there might be a one-year or even longer "enforcement vacuum" in newly-opened PPGs.

8. After cases of omission were found, LCSD proposed improvement measures, including deliberation with LandsD to speed up deposits of layout plans, and revision of internal guidelines to set out the procedures for preparing and depositing layout plans of new PPGs, requiring staff to complete the gazetting and deposit procedures. However, there is no definite instructions or specific measures in the revised guidelines to ensure that a layout plan will have been deposited in LR when a PPG is open to public or a venue officially taken over from other departments becomes a PPG under PHMSO.

9. Hence, we consider that LCSD should further review the current procedures and arrangements for gazetting and opening of PPGs for public use, and introduce effective measures such as exploring the feasibility of depositing a provisional plan showing boundaries of the major area of a PPG, so as to avoid any

"enforcement vacuum" that may affect the operation and management of PPGs.

Recommendations

10. In view of the above, The Ombudsman has recommended that LCSD:

(1) draw up clear guidelines requiring staff to prepare a layout plan for every PPG and then deposit it in LR as required by law;

(2) strictly require DLSOs to report to the headquarters regularly the progress of deposits of layout plans to avoid omissions;

(3) review the current procedures and arrangements for gazetting and opening of PPGs for public use to eliminate any "enforcement vacuum";

(4) explore the feasibility of simplifying layout plans and depositing in LR a provisional plan which shows mainly the boundary of the major area of a new PPG to meet the requirements under PHMSO;

(5) establish a mechanism to facilitate effective communication with LandsD on depositing of layout plans for better collaboration;

(6) set up as soon as practicable a central database on layout plans of PPGs for proper management of records; and

(7) expedite the study of keeping electronic records of layout plans and setting up a computerised system to handle and monitor the work.

Office of The Ombudsman
December 2019

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[illegible]

[illegible]

1.1 [illegible] 2019 [illegible] 9 [illegible] 1,800 [illegible]

1.2 2019 [illegible] 3 [illegible] 132 [illegible] 450 [illegible] 2019 [illegible] 2 [illegible]

1.3 [illegible] 2019 [illegible] 8 [illegible] 2 [illegible] 397 [illegible] 7(1)(a)(ii) [illegible]

[illegible]

1.4 [illegible]

- [illegible]
- [illegible]
- [illegible]

[illegible]

1.5 [illegible]

- [illegible]
- [illegible]
- [illegible]
- [illegible]

1.6 2019 [illegible] 10 [illegible] 16 [illegible] 2019 [illegible] 12 [illegible] 10 [illegible]（www.ombudsman.hk）[illegible]

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[illegible]

[illegible]

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2.2 [illegible] 4 [illegible]

[illegible]

2.3 [illegible] 106(1) [illegible] (6) [illegible] **2.6** [illegible] 4 [illegible] 106(2) [illegible] 4 [illegible]

[illegible]

2.4 [illegible] 106(3)[illegible](4)[illegible] 106(5)[illegible]

2.5 [illegible] 106 [illegible]

[illegible]

2.6 [illegible] 106 [illegible] 4 [illegible] **2.3** [illegible] 4 [illegible]

2.7 [illegible]

2.8 [illegible]

2.9 [illegible]

2.10 [illegible] **2.8** [illegible]

3 [illegible]

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[illegible]

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[illegible]**1**[illegible]

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[illegible]([illegible])[illegible] [illegible]371[illegible]	[illegible]	✓	✓
[illegible]([illegible])[illegible] [illegible]600[illegible]	[illegible]	✓	✓
[illegible] [illegible]132BC[illegible]	[illegible]*	✓	
[illegible] [illegible]132E[illegible]	[illegible]#	✓	

* [illegible]30[illegible]

\# [illegible]16[illegible]

[illegible]

3.3 [illegible]2018[illegible]8[illegible]

3.4 [illegible]2(1)[illegible]

3.5 [illegible]1960[illegible]

> [illegible] *"public pleasure ground" ([illegible]) means any place for the time being specified in the Fourth Schedule and delineated on any plan thereof which* ***may****, for the time being, have been deposited in accordance with the provisions of section 106(5), and, in the case of a beach, includes the sea and the sea-bed within the limits of the beach*[illegible]

[illegible]

3.6 [illegible]1996[illegible]

> [illegible] *"[illegible]" (public pleasure ground)[illegible]4[illegible]106(5)[illegible]*

[illegible]106(5)[illegible]

3.7 [illegible]1[illegible]10B[illegible]

3.8 [illegible]**2.10**[illegible]2018[illegible]9[illegible]12[illegible]450[illegible]

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389	194

[illegible]

3.9 [illegible] **3.7** [illegible] 2000 [illegible] **3.5** [illegible] **2.6** [illegible]

3.10 [illegible]

(1) [illegible]

(2) [illegible]

(3) [illegible] 2000 [illegible]

3.11 [illegible]

(1) [illegible]

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3.12 [illegible] **3.7** [illegible]

3.13 2019 [illegible] 2 [illegible]

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[illegible] [illegible] 132E [illegible]	--	[illegible]

3.15 [illegible]

3.16 2019 [illegible] 6 [illegible]

- [illegible] 2019 [illegible] 4 [illegible]
- [illegible] 2019 [illegible]

3.17 [illegible] 2019 [illegible] 7 [illegible]

[illegible]

3.18 [illegible]

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(2) [illegible]

(3) [illegible]

(4) [illegible]

(5) [illegible]

3.19 [illegible]

(1) [illegible]

(2) [illegible]

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[illegible]

4.1 [illegible] 2000 [illegible] 19 [illegible]

4.2 [illegible]

4.3 [illegible]

4.4 [illegible]

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4.5 [illegible] **3.5** [illegible]

4.6 [illegible] **3.5** [illegible] **3.6** [illegible]

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[illegible]

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4.8 [illegible] **2.10** [illegible] **3.10(2)** [illegible]

4.9 [illegible] **2.4** [illegible]

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4.10 [illegible] **2.6** [illegible]

4.11 [illegible]

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4.12 [illegible] **3.9** [illegible] **2.6** [illegible] **2.9** [illegible]

4.13 [illegible] 2018 [illegible]

[illegible] **3.8** [illegible] 2019 [illegible] 6 [illegible] **3.16** [illegible] **4** [illegible]

[illegible]4[illegible] 2018[illegible]8[illegible]2019[illegible]6[illegible]

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[illegible]	2018[illegible] 11[illegible]24[illegible]	2019[illegible] 4[illegible]29[illegible]	[illegible]5[illegible]
[illegible]	2019[illegible] 1[illegible]14[illegible]	2019[illegible] 4[illegible]9[illegible]	[illegible]3[illegible]
[illegible]	2019[illegible] 3[illegible]1[illegible]	2019[illegible] 4[illegible]29[illegible]	[illegible]2[illegible]

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4.14 [illegible]2019[illegible]8[illegible]**3.18**[illegible]**3.19**[illegible]**2.7**[illegible]

4.15 [illegible]

4.16 [illegible]

4.17 [illegible]

4.18 [illegible] **2.7** [illegible]

4.19 [illegible]

4.20 [illegible] 2(1) [illegible] *[illegible]……[illegible]* [illegible] **3.6** [illegible] 106 [illegible]

4.21 [illegible]
12 [illegible]

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4.22 [illegible]

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4.23 [illegible]

(1) [illegible] **4.7** [illegible]

(2) [illegible] **4.9** [illegible]

(3) [illegible] **4.16**[illegible]**4.17**[illegible] **4.18** [illegible] **4.21** [illegible]

(4) [illegible] **4.19**[illegible]**4.20** [illegible] **4.21** [illegible]

(5) [illegible] **4.11** [illegible]

(6) [illegible] **3.18(2)**[illegible]**(3)**[illegible]

(7) [illegible] **3.18(3)**[illegible]**3.18(4)**[illegible] **4.9** [illegible]

[illegible]

4.24 [illegible]

[illegible]
[illegible]**OMB/DI/434**
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(6) □□□□□□□□□□□4□□□□□□□□
(□1976□□9□□10□□□)

Cap. 132 Public Health and Municipal Services Ordinance

Section 106 — Provision of public pleasure grounds

(1) The Authority may, from time to time, by order set aside places for use as public pleasure grounds, and may by the same or any subsequent order specify the purpose for which such grounds or any part thereof shall be used.
(2) The places specified in the Fourth Schedule shall be deemed to have been set aside under the provisions of subsection (1) for use as public pleasure grounds.
(3) The Authority shall, as soon as practicable, prepare a plan of every public pleasure ground.
(4) Where the boundaries of any public pleasure ground are so varied, or such pleasure ground is otherwise so changed, as to render any plan deposited in accordance with the provisions of subsection (5) no longer accurate, the Authority shall withdraw the plan so deposited and shall, as soon as practicable, prepare an amended plan or a new plan of such pleasure ground.
(5) Every plan prepared in accordance with the provisions of subsection (3) or (4) shall be deposited in the Land Registry.
(Amended 8 of 1993 s. 2; 20 of 2002 s. 5)
(6) The Authority may by order amend, or add to or delete from, the

Fourth Schedule.
(Amended 9 of 1976 s. 10)